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IN THE

Supreme Court of the United States

October Term, 1970

No. 573

GOVERNOR CLAUDE R. KIRK, JR., ET AL.,
Appellants,

-v.-

ROBERT H. HARGRAVE, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

BRIEF OF AMICUS CURIAE, FLORIDA EDUCATION RESEARCH FOUNDATION

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The Florida Education Research Foundation respectfully submits this brief amicus curiae and urges that the decision of the District Court (313 F. Supp. 944) invalidating Section 236.251, Florida Statutes, be reversed.

STATEMENT OF INTEREST

The Florida Education Research Foundation was formed in response to a growing awareness that great disparities exist among Florida counties in their ability to pay for educational services and that, as a result, the educational services

provided for children in poor counties are substantially inferior to those provided in wealthy counties. Membership in the Foundation is composed of parents and educators from relatively poor counties who feel that their children are at a disadvantage because the quality of education available to children in Florida depends in large measure on the wealth of the county in which they live.

The Foundation was organized to explore the reasons for existing inequalities in educational services and to disseminate information and recommendations on possible means of equalizing educational opportunities throughout the State.

The Foundation agrees with the fundamental proposition that the equal protection clause should be construed to prevent discrimination in educational services solely on the basis of wealth. However, it disagrees with the view of the District Court that the Millage Rollback Act contributes to existing discrimination in Florida. It believes that a proper development of the case in the District Court would have disclosed that the statute declared unconstitutional was one facet of a complex strategy designed to promote educational equality and that, if it is not reversed, the effect of the District Court's decision will be to increase rather than diminish existing disparities in educational opportunity.

ARGUMENT

POINT I

THE ISSUE OF WHETHER THE STATUTES INVALIDATED BY THE DISTRICT COURT IS A REASONABLE MEANS OF ACHIEVING EDUCATIONAL EQUALITY AND TAX EQUALIZATION IS TOO COMPLEX TO BE RESOLVED BY SUMMARY JUDGMENT.

In its decision, the District Court announced that it had "searched in vain for some legitimate state end for the discriminatory treatment imposed by the Act." (373 F. Supp. 948). It concluded, therefore, that the Act had no rational basis and that it was unconstitutional. We submit that if the facts had been fully developed in the District Court, it would have been clear that:

1. In Florida, as in many other states, a tremendous disparity exists among school districts in their ability to pay for public education. Since the ad valorem tax is the only local source of revenue available to support public schools, a county's ability to pay for educational services can be measured by the number of dollars that a tax levy of one mill would raise per pupil in average daily attendance (ADA). Measured in this way, the ability of school districts to pay for educational services in Florida ranges from $77.14 in Glades County to $7.22 in Gadsden County. Put another way, it would require a tax levy at the rate of 107 mills in Gadsden County to raise the same amount per pupil as Glades County could raise by a tax levy of 10 mills. Eliminating the millage cap might result in much higher tax rates in poorer counties but it would produce very little additional funds. The only effective means of neutralizing local disparities is increased state aid to local schools.

2. The disparity among the counties in their ability to pay for educational services has been partially counteracted by the application of state funds, primarily through the Minimum Foundation Program. Nevertheless, substantial inequalities still exist among the counties in total expenditures per pupil.

3. The reasons for the educational inequalities that remain are:

(a) Major differences in wealth from county to county;

(b) Reliance on property taxes when property is no longer the primary indicia of ability to pay;

(c) Insufficient state equalizing funds due to (i) the unwillingness of legislators from rich counties to vote for taxes which will be used mainly to provide educational services in other counties; and (ii) the reluctance of many legislators to take upon themselves the onus of voting additional state taxes if the needed funds can be made available locally by voter referendum; and

(d) The increasing unwillingness of voters who have little understanding of the complexities of school financing and who are influenced by extraneous considerations to vote additional taxes needed for public schools.

4. The Governor's Commission For Quality Education in a comprehensive report which was issued December 22, 1967, shortly before the Special Legislative Session at which the Millage Rollback Act was passed urged enactment of a statute limiting and equalizing local millage rates. The pertinent provision of the Report read:

> Each district should contribute its shares of approximately 25 percent by levying a school millage which is uniform throughout the entire state. Thus each taxpayer would be paying the same ad valorem tax rate regardless of the school district in which he lives. The State Board of Equalization should guarantee a fair and uniform ad valorem assessment, providing the equalization principle essential to any sound program of school financing. *Each school district should be given the latitude to levy a higher tax rate, up to a ten mill maximum to provide for education programs which it may wish to initiate but cannot be financed within the prescribed allowance.* The restriction of ten mills would be one-half of the millage presently permitted by the Constitution. The school millage elec-

tion becomes obsolete under this system. (Emphasis supplied).

5. The Act which was declared unconstitutional by the District Court was passed along with other enactments as part of a legislative package designed to implement the recommendations of the Governor's Commission. The effect of the total package was to decrease substantially previous inequities both in educational funding and in the rate of taxes imposed for educational services.

6. The political effect of the statute in subsequent sessions of the Legislature has been to produce greater state aid to local schools and to diminish inequalities both in total expenditures per pupil and in tax rates levied for education. Although major inequities remain in total expenditures per pupil, they are not due to the Millage Rollback Act. Without the Act and the political pressure it exerts in favor of state funding, the remaining inequities would probably be greater.

If the facts had been properly developed in the District Court it would have been clear that consideration of the Act in isolation outside the total context of public school financing was improper and prevented the Court from understanding its purpose. By entering a summary judgment declaring the Millage Rollback Act invalid, the Court eliminated a powerful political incentive which was intended to and which has in fact put primary responsibility on the state legislature for equalizing educational opportunities.

POINT II

THE STATUTE WHICH WAS INVALIDATED BY THE DISTRICT COURT WAS A REASONABLE MEANS OF (A) PROMOTING EDUCATIONAL EQUALITY AMONG THE COUNTIES AND (B) ELIMINATING GROSS INEQUITIES AMONG THE COUNTIES IN PROPERTY TAX RATES LEVIED FOR EDUCATIONAL SERVICES.

The act invalidated by the District Court was part of an overall legislative package in which state aid to local schools was increased. It was one of several acts which substantially diminished inequalities among the counties in total expenditures per pupil and moved in the direction of equalizing taxes levied for public school purposes.

The only way to achieve educational equality is for the states to accept increased responsibility for educational funding by voting more state funds, distributing them by a formula which counteracts local inequalities, and limiting the use of local taxes for public schools. This is clear from studies made by the Advisory Commission on Intergovernmental Relations which has called on the state to adopt such a program.

John Shannon, Assistant Director of the Advisory Commission, testified on October 6, 1970, before the Senate Select Committee on Equal Educational Opportunity. He urged the states to relieve local school districts of virtually all responsibility for financing education. He listed five considerations underlying this position:

> First and foremost, State takeover would represent a giant step toward equalization of educational opportunity.
>
> * * *
>
> Second, State assumption of most of the responsibility for school financing is necessary in order to fix political accountability for educational finance where it belongs—at the doorstep of the Governor and State legislature.
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> * * *
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> Third, State takeover of educational financing responsibility will hurry history along with respect to the measurement of student achievement.
>
> * * *
>
> Fourth, State financing of our schools is necessary because the combined expenditure demands of education

and local government are placing too great a burden on the property tax base in general and on our low income householders in particular.

* * *

Fifth, by lifting most of the school financing burden off the local property tax base, the State would also undercut much of the fiscal logic that now supports exclusionary zoning practices in many suburban jurisdictions.

In dealing with objections to state financing, Mr. Shannon made the following statement:

The Commission believes that localities should continue to administer the schools even though the State provides all, or nearly all, of the money. The Commission also believes that localities should be empowered to supplement the State funds from local sources. *But, to achieve the recommendation's dual purposes, any local financial supplement should be strictly limited—perhaps to not more than 10 percent.* Otherwise the local property tax would not be freed up, and state-wide equality of educational opportunity would not be assured. (Emphasis supplied)

The act which was declared invalid by the District Court is part of an evolving program which closely follows the recommendations of the Advisory Commission.

CONCLUSION

We respectfully submit that in a proper case, this Court should hold that the equal protection clause of the Constitution prevents discrimination in educational services on the basis of wealth. However, the discrimination that exists in Florida was not produced by the Millage Rollback Act. It was created by reliance on local property taxes. The improvement in recent years has come from discouraging this reliance. The discrimination that remains is caused by inadequate state fund-

ing and by residual inequities in the formula by which state funds are distributed. The decision of the District Court encourages a return to local effort. Instead of promoting equal protection of the laws the decision, if not reversed, would produce greater educational inequality.

It is submitted that the decision should be either reversed outright or returned to the District Court for a full development of the factual context.

Respectfully submitted,

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